

Proposed Administrative Consent Agreement
Background Summary

Subject: Mainely Grass Holding LLC
288 South River Rd. Bldg A, Unit 3
Bedford, NH 03110

Date of Incident(s): April 29, 2020 - August 14, 2023

Background Narrative: On April 29, 2020, a licensed applicator for Mainely Grass applied Talstar P Insecticide, EPA Reg. No. 279-3206, to a residential property located in Kennebunk, ME for control of mosquitoes and ticks. During a certified applicator record check on August 6, 2020, following up on a complaint of failure to notify, a Board inspector documented the application made on April 29, 2020, was conducted during wind speed of 13 mph per the pesticide application record. The label for Talstar P states within the Mosquito Control directions for use, “Do not apply when speed exceeds 10 MPH.”

On August 20, 2020, the Board received a complaint regarding failure to notify a member of the 2020 Pesticide Notification Registry. A follow-up inspection conducted by a Board inspector indicated that the Company made pesticide applications at 1 & 3 Oceanview Ave. in Kennebunkport on August 18, 2020. Both 1 & 3 Oceanview Ave. are within 250 feet of a member of the Pesticide Notification Registry and were properly listed. The Company could not provide documentation of attempted notification for these applications. The Company also failed to notify this registrant prior to a pesticide application at 1 Oceanview Ave. on July 20, 2022.

On September 13, 2022, the Board received an email from a member of the 2022 Pesticide Notification Registry in York, stating that a pesticide application had been made at their neighbor’s property without proper notification. A follow-up inspection conducted by a Board inspector indicated that the Company made a pesticide application of Wisdom TC Flowable Insecticide, EPA Reg. No. 5481-520 to the yard at 3 Ash Lane in York to control ticks and mosquitoes on September 12, 2022. The property at 3 Ash Lane, York is within 250 feet of a member of the 2022 Pesticide Notification Registry. The Company did not make proper notification to the registrant. The Company also failed to notify this registrant prior to a pesticide application at 3 Ash Lane on April 20, 2023.

On April 20, 2023, the Board received a complaint from a resident in Kennebunk who was concerned about possible pesticide drift to their property from an application made at the neighboring property. On April 20, 2023, two Board inspectors visited the complainant’s property in Kennebunk and collected two foliage samples from the complainant’s property and one from the target property. A follow-up inspection with the Company applicator determined that an application of Bisect L Insecticide, EPA Reg. No. 34704-955, was made at 21 Ocean View Road in Kennebunk to control mosquitoes and ticks on April 19, 2023. The laboratory sample results

report for bifenthrin, the active ingredient in Bisect L Insecticide, showed residue concentrations of 73 parts per million on the target site and 27 parts per million on the complainant's property.

On July 13, 2023, the Board received a complaint alleging that the Company made a pesticide application to their property in Biddeford, Maine, without authorization. During the course of the inspection, the Board inspector ascertained that an application of Progaea TM Pro, an EPA minimum risk pesticide exempt from federal registration requirement to 15 Long Avenue in Biddeford to control mosquitoes and ticks on July 13, 2023. The inspection discovered that the application was intended and authorized to occur at 17 Long Avenue in Biddeford.

On July 28, 2023, the Board received a complaint from a participant in the 2023 Maine Pesticide Notification Registry alleging that the Company failed to provide prior notification about a pesticide application made to an adjacent residential property in Kennebunk on July 27, 2023. The Board inspector ascertained that an application of Talstar P, EPA Reg. No. 279-3206, occurred at 20 Sea Garden Circle in Kennebunk, Maine, to control mosquitoes and ticks on July 27, 2023. The property at 20 Sea Garden Circle is within 250 feet of the registry member's property. The Company failed to notify the registrant.

On August 14, 2023, the Board received a complaint from a resident in Saco who observed a pesticide application to an abutting property and was concerned about possible pesticide drift. A Board inspector visited the complainant's property and collected foliage samples from the complainant's property and the intended target area. The inspection determined that Talstar P Insecticide, EPA Reg. No. 279-3206, was applied at 1 Foley Avenue in Saco to control mosquitoes and ticks on August 14, 2023. The laboratory sample results report for bifenthrin, the active ingredient in Talstar P Insecticide, showed residue concentrations of 97 parts per million on the target site and 12 parts per million on the complainant's property.

Summary of Violations: CMR 01-026, Chapter 28, Section 2 (D) requires commercial applicators to provide advance notification of outdoor pesticide applications made within 250 feet of the property of any participant on the current year Notification Registry.

The violations described above are considered a second, third, fourth and fifth offense within a four-year period pursuant to 7 M.R.S. § 616-A (2) A (2).

7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use of a pesticide inconsistent with its label.

The label for Talstar P states within the Mosquito Control directions for use, "Do not apply when speed exceeds 10 MPH."

01-026 C.M.R. ch. 22, § 4(B)(II) provides that "off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie

evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.”

01-026 C.M.R. ch. 20, § 6 requires that, “No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property.”

Rationale for Settlement: Mainely Grass Holding LLC, accepts responsibility for these violations by entering into this proposed consent agreement. The Company has instituted new notification practices to comply with Chapter 28. The Company has worked with Board staff to have better understanding of these violations, how they have occurred and what practices and training can be implemented to avoid these incidents in the future.

Attachments: Proposed Consent Agreement

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
BOARD OF PESTICIDES CONTROL

MAR 13 2024

\$ 17500⁰⁰

In the Matter of:)	ADMINISTRATIVE CONSENT
Mainely Grass Holding LLC)	AGREEMENT
288 South River Road, Bldg A, 3)	AND
Bedford, New Hampshire, 03110)	FINDINGS OF FACT

2-26-24
CK 92

This Agreement by and between Mainely Grass Holding LLC (hereinafter referred to as the “Company”) and the State of Maine Board of Pesticides Control (hereinafter referred to as the “Board”), as approved by the Office of the Attorney General (“OAG”), is entered into pursuant to 22 M.R.S. § 1471-M(2)(D) and in accordance with the Enforcement Protocol amended by the Board on December 13, 2013.

The parties to this Agreement agree as follows:

1. That the Company provides turf and outdoor pest control services, including commercial pesticide applications, in Maine, New Hampshire, and Massachusetts.
2. That on August 6, 2020, a Board inspector conducted a pesticide application records review with Company personnel in response to an inquiry the Board received by a concerned beekeeper. During the course of the records review, the inspector determined Thomas Wilkinson, a Company employee, made an application of Talstar P, EPA Reg. No. 279-3206, on April 29, 2020, for control of ticks and mosquitoes at a residence in Kennebunk, Maine. The application record indicated that the wind speeds were 13 miles per hour.
3. That the Talstar P label, under the directions for mosquito control, states—in part—“Do not apply when wind speed exceeds 10 MPH.”
4. That 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) prohibit the use or supervision of such use of a pesticide inconsistent with its label, and 22 M.R.S. § 1471-D(8)(F) provides for court action to seek suspension or revocation of an applicator’s license and/or certification for use or supervision of such use of a pesticide inconsistent with its label.
5. That the circumstances described in Paragraphs 2, 3, and 4 constitute a violation of 7 U.S.C. § 136j(a)(2)(G) and 7 M.R.S. § 606(2)(B) and would permit court action to seek suspension or revocation of an applicator’s license and/or certification pursuant to 22 M.R.S. § 1471-D(8)(F).
6. That on August 20, 2020, the Board received a complaint from a participant in the 2020 Pesticide Notification Registry in Kennebunkport, Maine. The complainant alleged that he had not received prior notification for two pesticide applications made by the Company on August 18, 2020, to properties that were within 250 feet of his property, and which were listed on the 2020 Pesticide Notification Registry as properties listed on the registry which required notification to an adjacent resident.
7. That on August 20, 2020, a Board inspector interviewed the complainant and confirmed that the properties which were sprayed were listed on the 2020 Registry and that the Registry participant should have been notified pursuant to 01-026 C.M.R. ch. 28, § 2(D).
8. That on September 2, 2020, the Board inspector conducted a follow-up inspection with William Plummer, an employee of Company. The inspector ascertained that Ian Clark, a licensed applicator employed by the Company, made applications of Mec Amine D Herbicide, EPA Reg. No. 34704-239, Q-Ball Herbicide, EPA Reg. No. 228-744, and Sedgehammer Herbicide, EPA Reg. No. 81880-24-10163, to the lawns at residences located at both 1 and 3 Oceanview Avenue in Kennebunkport. Both residences were listed on the 2020

Pesticide Notification Registry as properties listed on the registry which required notification to an adjacent resident.

9. That during the course of the follow-up inspection described in Paragraph 8, the inspector confirmed that the Company failed to provide prior notification to the participant on the 2020 Pesticide Notification Registry.
10. That the circumstances described in Paragraphs 6 through 9 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).
11. That on July 20, 2022, the Board received an email from a participant in the 2022 Maine Pesticide Notification Registry from Kennebunkport in which the participant stated that the Company had failed to provide advance notice for a pesticide application conducted to a property listed in the registry as requiring notification to an adjacent resident.
12. That on July 21, 2022, a Board inspector interviewed the registry participant and confirmed the relevant addresses and details.
13. That on July 21, 2022, a Board inspector conducted a follow-up inspection with Andrew Baxter, Branch Manager and licensed commercial master applicator for the Company at the branch office at 690 Stroudwater St. in Westbrook, Maine.
14. That during the course of the inspection described in Paragraph 13, on July 20, 2022, Charles Richards, Jr., a licensed applicator employed by the Company, made an application of Talstar 0.069% Plus Fertilizer, EPA Reg. No. 279-3216-82757, Q-Ball Herbicide, EPA Reg. No. 228-744, and MEC AMINE-D Herbicide, EPA Reg. No. 34704-239, to the lawn at 1 Oceanview Ave. in Kennebunkport.
15. That during the course of the inspection described in Paragraph 13, the inspector ascertained that all Company advance notification requests are implemented through the Company headquarters in New Hampshire. The inspector further ascertained that Company employee Gregory Ciotti had mistakenly placed the advance notice call to the customer instead of the Maine Pesticide Notification Registry participant.
16. That the application site described in Paragraph 14 is within 250 feet of the residential property for a 2022 Maine Pesticide Notification Registry Participant.
17. That the circumstances described in Paragraphs 11 through 16 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).
18. That on September 13, 2022, the Board received an email from a member of 2022 Maine Pesticide Notification Registry in York stating that a pesticide application placard was observed at a neighbor's property dated September 12, 2022. The email further stated that the registry participant was not contacted prior to application on September 12.
19. That on September 21, 2022, a Board inspector conducted a follow-up inspection at the Mainely Grass branch office in Westbrook, Maine. The inspector interviewed Branch Manager Andrew Baxter in person and licensed Company applicator Olivia Parents by phone. Ms. Parents is located in New Hampshire.
20. That based on the inspection described in Paragraph 19, the inspector determined that Parents made an application of Wisdom TC Flowable Insecticide, EPA Reg. No. 5481-520 to the yard at 3 Ash Lane in York to control ticks and mosquitoes on September 12, 2022.
21. That based on the inspection and interviews described in Paragraph 19, the inspector also determined that Parents had worked through her customer list for September 12, and consequently was able to add additional

customers to her day's work. Because the application described in Paragraph 20 was a last-minute addition, the Company failed to provide advance notice to the registry participant living adjacent to application site.

22. That the property and application site described in Paragraph 20 is within 250 feet of the residential property for a 2022 Maine Pesticide Notification Registry Participant.
23. That the circumstances described in Paragraphs 18 through 22 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).
24. That on April 20, 2023, the Board received a complaint from a resident in Kennebunk who was concerned about possible pesticide drift to the resident's property from a pesticide application made to an abutting residential property the previous day.
25. That on April 20, 2023, two Board inspectors visited the complainant's property in Kennebunk to interview the complainant and to follow up on the complaint. As part of their investigation, the Board inspectors collected two foliage samples from the complainant's property and one from the target property.
26. That on April 20, 2023, the Board inspectors conducted a follow-up inspection with licensed Company applicator Hollis Martin. As part of the follow-up inspection, Board inspectors ascertained the details relative to the April 19 application to the abutting residential property.
27. That the Board inspectors determined that Martin made an application of Bisect L Insecticide EPA Reg. No. 34704-955, Defendor Herbicide EPA Reg. No. 62719-560, and Fertilizer w/ Barricade 34-0-12 EPA Reg. No. 52287-6, to 21 Ocean View Road in Kennebunk to control mosquitoes, ticks, and crabgrass on April 19, 2023.
28. That the laboratory sample results report for bifenthrin, the active ingredient in Bisect L Insecticide, showed residue concentrations of 73 parts per million on the target site and 27 parts per million on the complainant's property.
29. That 01-026 C.M.R. ch. 22 applies to outdoor pesticide applications made with powered equipment.
30. That 01-026 C.M.R. ch. 22, § 4(B)(II) provides that "off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable."
31. That the circumstances described in Paragraphs 24 through 30 constitute prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
32. That the circumstances described in Paragraphs 24 through 31 constitute a violation of 01-026 C.M.R. ch. 22, § 4(B)(I), which requires that "Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors."
33. On April 24, 2023, the Board received a complaint from a participant in the 2023 Maine Pesticide Notification Registry alleging that the Company failed to provide prior notification about a pesticide application made to an adjacent residential property on April 20, 2023.
34. That in response to the complaint described in Paragraph 33, a Board inspector conducted a follow-up inspection with Joshua Benning, the licensed Company applicator who performed the April 20 application.

35. That during the course of the inspection described in Paragraph 34, the Board inspector ascertained that Benning applied Talstar P, EPA Reg. No. 279-3206, to 3 Ash Lane in York to control mosquitoes and ticks on April 20.
36. That during the course of the inspection described in Paragraph 34, the Board inspector ascertained that Company had mistakenly notified its customer about the application instead of the registry participant.
37. That the circumstances described in Paragraphs 33 through 36 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).
38. That on July 13, 2023, the Board received a complaint alleging that the Company made a pesticide application to the complainant's property in Biddeford, Maine, without authorization.
39. That in response to the complaint described in Paragraph 38, a Board inspector conducted a follow-up inspection with licensed Company applicator Alexander Lancaster on July 26, 2023, at the Company branch office in Westbrook.
40. That during the course of the inspection described in Paragraph 39, the Board inspector ascertained that Lancaster made an application of Progaea TM Pro, an EPA minimum risk pesticide exempt from federal registration requirements under 7 U.S.C. § 136w(b), to 15 Long Avenue in Biddeford to control mosquitoes and ticks on July 13, 2023.
41. That during the course of inspection described in Paragraph 39, the Board inspector ascertained that the application described in Paragraph 40 was intended and authorized to occur at 17 Long Avenue in Biddeford.
42. That 01-026 C.M.R. ch. 20, § 6 requires that, "No person may apply a pesticide to a property of another unless prior authorization for the pesticide application has been obtained from the owner, manager or legal occupant of that property."
43. That the circumstances described in Paragraphs 38 through 42 constitute a violation of 01-026 C.M.R. ch. 20, § 6.
44. That on July 28, 2023, the Board received a complaint from a participant in the 2023 Maine Pesticide Notification Registry alleging that the Company failed to provide prior notification about a pesticide application made to an adjacent residential property in Kennebunk on July 27, 2023.
45. That on August 7, 2023, in response to the complaint described in Paragraph 44, a Board inspector conducted a follow-up inspection with Patrick Hudson, the licensed Company applicator who performed the July 27 application.
46. That during the course of the inspection described in Paragraph 45, the Board inspector ascertained that Hudson applied Talstar P, EPA Reg. No. 279-3206, to 20 Sea Garden Circle in Kennebunk, Maine, to control mosquitoes and ticks on July 27, 2023.
47. That during the course of the inspection described in Paragraph 45, the Board inspector ascertained that the Company had mistakenly notified its customer about the application instead of the registry participant.
48. That the circumstances described in Paragraphs 44 through 47 constitute a violation of 01-026 C.M.R. ch. 28, § 2(D).

49. That on August 14, 2023, the Board received a complaint from a resident in Saco who observed a pesticide application to an abutting property and was concerned about possible pesticide drift to the complainant's property based on observations of the manner in which application was made. The complainant stated she observed a Company applicator spraying toward the complainant's property.
50. That on August 14, 2023, a Board inspector visited the complainant's property, interviewed the complainant, reviewed videos provided by the complainant, and collected foliage samples from the complainant's property and the intended target area.
51. That on August 16, 2023, the Board inspector conducted a follow-up inspection with Aiden Ozment, a licensed applicator employed by the Company at the Company branch office in Westbrook.
52. That based on the inspection described in Paragraph 51, the inspector determined that Ozment applied Talstar P Insecticide, EPA Reg. No. 279-3206, to 1 Foley Avenue in Saco to control mosquitoes and ticks on August 14, 2023. Ozment further stated that August 14 was his first time applying to this property. He stated he did not view the property map prior to the application. The application records indicate that the treated area was 6000 square feet, while the property map shows a calculated spray area of 2481.4 square feet.
53. That the laboratory sample results report for bifenthrin, the active ingredient in Talstar P Insecticide, showed residue concentrations of 97 parts per million on the target site and 12 parts per million on the complainant's property.
54. That 01-026 C.M.R. ch. 22 applies to outdoor pesticide applications made with powered equipment.
55. That 01-026 C.M.R. ch. 22, § 4(B)(II) provides that "off-target drift of pesticides from a nearby application that are 1% or greater of the residue in the target area are considered prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable."
56. That the circumstances described in Paragraphs 49 through 55 constitute prima facie evidence that the application was not conducted in a manner to minimize drift to the maximum extent practicable.
57. That the circumstances described in Paragraphs 49 through 56 constitute a violation of 01-026 C.M.R. ch. 22, § 4(B)(I), which requires that "Pesticide applications shall be undertaken in a manner which minimizes pesticide drift to the maximum extent practicable, having due regard for prevailing weather conditions, toxicity and propensity to drift of the pesticide, presence of Sensitive Areas in the vicinity, type of application equipment and other pertinent factors."
58. That this agreement details nine separate complaints resulting in nine documented violations against the Company between August 6, 2020, and August 14, 2023.
59. That the violations described in Paragraphs 17, 23, 37, 48, and 57 are considered subsequent violation pursuant to 7 M.R.S. § 616-A(2)(A)(2).
60. That the Company expressly waives:
 - A. Notice of or opportunity for hearing;
 - B. Any and all further procedural steps before the Board; and
 - C. The making of any further findings of fact before the Board.

61. That this Agreement shall not become effective unless and until the Board accepts it.
62. That in consideration for the release by the Board of the causes of action which the Board has against the Company resulting from the violations referred to in Paragraphs 5, 10, 17, 23, 32, 37, 43, 48, and 57, the Company agrees to pay a penalty to the State of Maine in the sum of \$17,500.00, due by February 28, 2024. (Please make checks payable to Treasurer, State of Maine.)
63. The Board and OAG grant a release of their causes of actions against the Company for the specific violations cited in the immediately preceding paragraph (Paragraph 62) on the express condition that all actions listed in Paragraph 62 of this Agreement are completed in accordance with the express terms and conditions of this Agreement and to the satisfaction of the Board and the OAG. The release shall not become effective until the Company has completed its obligations pursuant to Paragraph 62.
64. Any non-compliance with any term or condition of this Agreement, as determined by the Board and OAG in their sole discretion, voids the release set forth in Paragraph 62 of this Agreement and may lead to an enforcement, suspension/revocation, equitable, and/or civil violation action pursuant to Titles 7 and 22 of the Maine Revised Statutes.
65. Nothing in this Agreement shall be construed to be a relinquishment of the Board's or OAG's powers under Titles 7 and 22 of the Maine Revised Statutes against the Company for any other violations other than those expressly listed in this Agreement.
66. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding; this contract may not be enlarged, modified, or altered except in writing signed by the parties and indorsed on this Agreement.
67. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement of six pages.

MAINELY GRASS HOLDING LLC

By:  Date: 2/23/2024

Type or Print Name: Edward Coady

BOARD OF PESTICIDES CONTROL

By: _____ Date: _____
John Pietroski, Acting Director

APPROVED:

By: _____ Date: _____
Carey Gustanski, Assistant Attorney General